IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10818 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAVJIBHAI K CHAUHAN

Versus

CENTRAL SALT & MARINE CHEMICALRESEARCH INSTITUTE

Appearance:

1. Special Civil Application No. 10818 of 1993

MS BHAVIKA KOTECHA FOR MR YOGESH S LAKHANI for Petitioner No. 1

MR ANANT S. DAVE for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 13/11/2003

ORAL JUDGEMENT

Heard learned advocate Ms.Bhavika Kotecha for learned advocate Mr.Y.S.Lakhani on behalf of the petitioner and learned Asstt. Standing Counsel for

Central Government Mr.Anant S. Dave for respondents.

In the present petition, the petitioner has challenged the order passed by the Central Government dated 17th September, 1993 [Annexure-D at page.32 of the petition], wherein the Central Government being the appropriate Government while exercising the powers under Section 12[5] of the Industrial Disputes Act, 1947 and come to the conclusion that the industrial dispute raised by the petitioner don't consider being a fit case for Reference for adjudication due to reason that the workman was appointed by the management against the scheme sponsored by the Department of Non Government Energy Sources which is now closed and his appointment was for specific period on contract basis and therefore, considering the provisions Section 2[oo][bb] of the Industrial Disputes Act, the workman is not eligible for notice or retrenchment compensation.

Learned advocate Ms.Bhavika Kotecha submitted that the Central Government being the appropriate Government while exercising the powers under Section 10 and 12 of the Industrial Disputes Act, 1947 should not have decided the merits between the parties. The power is with the Government to see that whether the industrial dispute is existing or apprehended as sponsored by the Union or not. If the dispute is existing then, the appropriate Government has no power to decide or adjudicate the dispute while taking the decision whether the matter is required to be referred or not. She also submitted that considering the reason which has been given by the appropriate Government, it is clear case of adjudication by the Central Government which is not permissible under the law and beyond the jurisdiction of the Central Government. Therefore, the order is required to be quashed and set aside. She also relied upon the decision of the Apex Court rendered in case of TELCO CONVOY DRIVERS MAZDOOR SANGH V. STATE BHIHAR reported in 1989 SC 1565.

Learned advocate Mr.Anant S. Dave appearing for the respondents submitted that though the Government have no power to adjudicate the dispute while taking decision to refer or not to refer the dispute for adjudication but the Government have powers atleast to see prima facie case whether the dispute having any genuineness or not when the dispute is itself is covered by the statutory provision and no need to have any adjudication then, the Government certainly can go to an extent and say not to refer the matter for adjudication. Therefore, decision which has been taken by the Central Government on 17th

September, 1993 is within the purview of the Industrial Disputes Act and having jurisdiction to decide after considering statutory provisions and therefore, that order is legal and valid and no interference is required by this Court.

I have considered submissions made by both the learned advocates for the parties and also considered provisions of Section 10 & 12 of the Industrial Disputes Act, 1947. The law on this point is very settled because the powers given to the appropriate Government to see that whether any industrial dispute is existing between the employer and the workman or not. If any dispute is existing, that itself is enough to refer the matter for adjudication but the appropriate Government cannot examine the legality and validity of the industrial dispute in light of the statutory provisions. In fact, it is function of the labour court or the tribunal to adjudicate the issue otherwise, it is beyond the scope and contrary to the scheme of the Industrial Disputes Act, 1947. Looking to the reason given by the Central Government in its order dated 17th September, 1993, scheme has been closed and appointment is against the scheme and whether any appointment letter has been addressed to the employee about the scheme, all these questions still require to be examined by the tribunal which is based upon some oral evidence. The view taken by the Apex Court that if employee is appointed in the scheme but not informed by the employer and his appointment cannot be considered against the scheme. If Section 2[oo][bb] may not be applicable but general principles of last come first go whether considered by the Government or not. Therefore, merely appointment against the scheme as alleged by the employer and periodical appointment not covered within the definition of retrenchment that itself is not enough to decide not to refer the matter for adjudication. Therefore, the view taken by the respondents is apparently contrary to the law settled by the Apex Court. The appropriate Government has no jurisdiction or powers to examine the legality and validity of the industrial dispute. After perusing the reason given by the appropriate Government, according to my opinion, appropriate Government has clearly decided the industrial dispute raised by the Union. Therefore, it is beyond the scope of the powers and jurisdiction of the Central Government. This aspect has been examined b the Apex Court in TELCO CONVOY DRIVERS MAZDOOR SANGH V. STATE BHIHAR reported in AIR 1989 SC 1565. The observations made by the Apex Court in aforesaid case in para-11 & 13 which are important and

relevant to the facts of the case, quoted as under :

"11. It is true that in considering the question of making a reference under section 10(1), the Government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended", as urged by Mr. Shanti Bhusan. The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. In the instant case, as already stated, the dispute is as to whether the convoy drivers are employees or workmen of TELCO, that is to say, whether there is relationship of employer and employees between TELCO and the convoy drivers. In considering the question whether a refer, should be made or not, the Deputy Labour Commissioner and/or the Government have held that the convoy drivers are not workmen and, accordingly, no reference can be made. Thus, the dispute has been decided by the Government which is undoubtedly, not permissible.

13. Attractive though the contention is, we regret, we are unable to accept the same. It is now well settled that, while exercising power under section 10(1) of the Act, the function of the appropriate Government is an administrative function and not a judicial or quasi judicial function, and that in performing this administrative function the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by section 10 of the Act. See Ram Avtar Sharma v. State of Haryana, [1985] 3 SCR 686; M.P. Irrigation Kararnchari Sangh v. The State of M.P., [1985] 2 SCR 1019 and Shambhu Nath Goyal v. Bank of Baroda, Jullundur, [1978] 2 SCR 793."

In view of above observations made by the Apex Court and considering facts of the present case, the reason which has been given by the Central Government in its order dated 17th September, 1993, it is clear case of adjudication of the industrial dispute and therefore, according to my opinion, the Central Government has no power to adjudicate the dispute when it has been raised

before the authority. The power is very limited to see that whether Industrial Dispute exist or not and apprehend or not. Once the industrial dispute is existing, then the Central Government has no power to examine the legality and validity of such dispute and therefore, according to my opinion, the order which has been passed by the Central Government on 17th September, 1993 is without jurisdiction and contrary to the scheme of the Industrial Disputes Act, 1947. Therefore, the order in question dated 17th September, 1993 requires to be quashed and set aside.

In the result, the present petition is allowed. The order passed by the Central Government - Annexure-D dated 17th September, 1993 is hereby quashed and set aside with directions to the respondents to reconsider the matter in light of the observations made by the Apex Court in case of Telco Convoy as well as this Court and to pass appropriate orders in accordance with law within period of three months from the date of receiving the copy of this order.

Rule is made absolute with no order as to costs.

Date : 13.11.2003 [H.K.Rathod, J.]

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